

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 146/MP/2014

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Date of order: 28.05.2015

In the matter of

Petition under Section 79 (1) (f) and (k) of the Electricity Act, 2003 for declaring the commissioning of Pune-Aurangabad line on 30.11.2013

And

In the matter of

Western Region Transmission (Maharashtra) Pvt. Ltd.
12th Floor, Building No.10 B, DLF Cyber City,
Gurgaon-122 002

.....Petitioner

Vs

1. Power Grid Corporation of India Ltd.
Saudamini, Plot No. 2,
Sector 29, Gurgaon-122 001

2. M.P. Power Trading Company Limited
Shakti Bhawan, Jabalpur-482 002

3. Gujarat Urja Vikas Nigam Ltd
Sardar Patel Vidyut Bhawan, Race Course,
Vadodara-390 007

4. Maharashtra State Electricity Distribution Company Ltd.
Prakashgad, 4th Floor, Andheri (E), Mumbai-400 052

5. Chhattisgarh State Power Distribution Co. Ltd.
Vidhyut Sewa Bhawan, Danganiya, Raipur-492 013

6. Electricity Department, Vidhyut Bhawan,
Panaji, Goa-403 001



7. Electricity Department, Daman and Diu
Daman-396 210

8. Electricity Department
Dadra and Nagar Haveli, UT Silvassa-396 230

9. M.P.Audyogik Kendra Vikas Nigam Ltd.
3/54, Press Complex, Agra Mumbai Road,
Indore-452 008.

10. Jindal Power Limited
2nd Floor, DCM Building,
Plot No. 94, Sector-32,
Near Exist 9, Gurgaon-122 001

11. Power Trading Corporation of India Limited
NBCC Tower, 15, Bhikaji Cama Place,
New Delhi-110 066

12. Heavy Water Project
Department of Atomic Energy,
Heavy Water Board,
Vikram Sarabhai Bhawan,
Anushakti Nagar, Mumbai-400 094

13. Sugen Mega Power Project Torrent Power Limited
Off. National Highway No.8,
Taluka-Kamrej, District-Surat-394 155

14. Adani Power Limited
8-A, Sambhav Building,
Judges Bungalow Road,
Bodak Dev, Ahmedabad-380 015

....Respondents

Parties Present:

Shri Buddy A. Ranganathan, Advocate for the petitioner
Shri Hasan Murtaza, Advocate for the petitioner
Shri Aditya Panda, WRTMPL
Shri Surendra Khot, WRTMPL
Shri L.N.Mishra, WRTMPL
Shri Naveen Nagpal, WRTMPL
Shri M.M. Dhakata, WRPC

ORDER

The petitioner, Western Region Transmission (Maharashtra) Pvt. Ltd (WRTMPL) has filed this petition seeking declaration of the date of commercial operation of Pune (PG)-Aurangabad (MSETCL) as 30.11.2013.

2. The petitioner has submitted that it is an inter-State transmission licensee for implementation of Project B of Western Region System Strengthening Scheme-II which comprises of six Nos. of 400 kV D/C Twin Moose transmission lines as per the details given below:

- (i) Parli (PG) -Pune (MSETCL)
- (ii) Pune (PG) - Aurangabad (MSETCL)
- (iii) Parli (PG)-Solapur (PG)
- (iv) Solapur (PG) - Kolhapur (MSETCL)
- (v) LILO of Sholapur (MSETCL) - Karad (MSETCL) at Solapur (PG)
- (vi) LILO of Lonikhand (MSETCL) - Kalwa (MSETCL) at Pune (PG)

3. The petitioner has submitted that the above transmission lines covered under the scope of the project achieved their commercial operation at different points of time. Pune (PG)-Aurangabad (MSETCL) 400 kV D/C transmission line was the last line to achieve commercial operation. The petitioner has submitted that though the transmission line was ready for commissioning on 30.11.2013, it was actually declared under commercial operation on 1.1.2014 as per the decision of Power Grid Corporation of India Limited (PGCIL).

4. The petitioner has sought declaration of commercial operation of the transmission line with effect from 30.11.2013 due to the following reasons:

(a) The construction work of the Pune (PG) – Aurangabad (MSETCL) 400 kV D/C transmission line was completed on 25.11.2013. The petitioner informed PGCIL verbally that the transmission line would be handed over on 29.11.2013 for charging. PGCIL through its e-mail dated 27.11.2013 confirmed that it was going ahead with PLCC commissioning work. After completion of the construction works, the transmission line was inspected by Electrical Inspector of CEA on 26/27.11.2013 and the No Objection Certificate (NOC) for energisation of the transmission line was received on 29.11.2013. The petitioner vide its letter dated 29.11.2013 furnished to PGCIL all relevant reports required prior to charging.

(b) Before carrying out the final test of the transmission line for handing over to PGCIL, the petitioner carried out the final patrolling work on 30.11.2013 wherein it was found that Maharashtra State Electricity Transmission Company Limited (MSETCL) was carrying out crossing of 400 kV D/C Bableshtar-Aurangabad quad transmission line over the petitioner's line. MSETCL completed its line work on 1.12.2013 and thereafter, the petitioner conducted the final test and handed over the transmission line to PGCIL on 1.12.2013 at 11 pm for energisation.

(c) The transmission line was finally been energised and put into operation on 5.12.2013. The petitioner vide its letter dated 17.12.2013 requested PGCIL to issue COD letter for the subject transmission line w.e.f. 1.12.2013. In response, PGCIL vide its letter dated 1.1.2014 declared commercial operation of the

transmission line w.e.f. 1.1.2014 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (2009 Tariff Regulations).

(d) The issue of commissioning of the transmission line was discussed in the 455th and 456th meetings of Operation and Coordination Committee (OCC) meeting of Western Regional Power Committee (WRPC) held on 16.1.2014 and 13.2.2014 respectively. In the 456th meeting, OCC of WPRC agreed for commissioning date as 30.11.2013. Accordingly, Member-Secretary, WRPC suggested the petitioner to approach the Commission for notional commissioning of the transmission line on 30.11.2013.

5. Against the above background, the petitioner has approached the Commission seeking a declaration of the transmission line as 30.11.2013.

6. The petition was admitted on 28.8.2014 and notices were issued to the respondents to file their replies. PGCIL in its reply dated 19.9.2014 has submitted that the subject transmission line was handed over to PGCIL on 1.12.2013 at 11 pm which was subsequently charged and the transmission line was declared under commercial operation with effect from 1.1.2014 in terms of 2009 Tariff Regulations. PGCIL has submitted that in view of above facts, the Commission may pass order as deemed appropriate.

7. Western Regional Power Committee (WRPC), vide Record of Proceedings for the hearing dated 20.10.2014 was directed to file its reply. WR-Regional Inspectorial Organization (RIO) was also directed to submit the following information/clarification:

- (i) Copy of letter dated 27.11.2013 from RIO (WR) ; and
- (ii) The rectification of defects as informed by the petitioner vide letter dated 29.11.2013 was accepted through letter on same day without physical verification, whether this is normal practice in case of other transmission projects we well.

8. WRPC in its reply dated 5.11.2014 has submitted that in the 455th OCC meeting, the matter was discussed and it was decided to call a separate meeting of MESTCL (STU-Aurangabad), SLDC Kalwa, WRTS-I (PGCIL), WRP and WRTMPL. Accordingly, a meeting was convened on 7.2.2014. After detailed deliberation, the following were decided in the meeting:

“1. WRTMPL had completed all the works on 29.11.2013. No works were pending from WRTMPL side and in the normal course of event WRTMPL would have charged/synchronized the line by 30.11.2013 evening.

2. The testing works carried out on 1st Dec 2013 by WRTMPL as indicated in discussions were delayed due to delay in crossing work of MSETCL.

3. PGCIL has carried out all other works except PLCC work and trial of isolator & breakers well before 29.11.2013.

4. Synchronizatioin of aforesaid line got delayed due to real time problems in PLCC faced by PGCIL, Aurangabad.

5. This group is of the view that there is absolutely no shortcoming from WRTMPL to make all the efforts to complete the line on or before 30.11.2013.”

WRPC has submitted that the above decisions were endorsed by OCC in the 456th OCC meeting held on 13.2.2014. OCC agreed for commissioning date of the subject transmission line as 30.11.2013 and Member Secretary, WRPC suggested WRTMPL to approach CERC for national date of commercial operation on 31.11.2013.

9. RIO (West) vide letter dated 7.11.2014 has submitted that rectification of defects was informed by the petitioner vide letter dated 29.11.2013 which was accepted by RIO without physical verification which is a normal practice in case of other transmission projects. RIO (W) has placed on record the letter dated 29.11.2013 issued by RIO conveying approval for charging of the transmission line.

Analysis and Decision:

10. The following two issues arise for our consideration based on the facts and pleading of the case:

(a) Whether MSETCL and PGCIL were responsible for the delay in trial operation and charging of the transmission line?

(b) Whether the case of the petitioner can be considered under second proviso to Regulation 3(12)(c) of the 2009 Tariff Regulations as prayed for by the petitioner?

Issue No. 1: Whether MSETCL and PGCIL were responsible for the delay in trial operation and charging of the transmission line?

11. After completion of Pune (PG)-Auragnabad (MSETCL) transmission line, the petitioner verbally informed PGCIL that Pune (PG)-Auragnabad (MSETCL) transmission

line would be handed over to PGCIL on 29.11.2013 for charging. PGCIL vide its email dated 27.11.2013 responded to the request of the petitioner as under:-

“As per verbal confirmation received from you, 400 kV Pune-Aurangabad line will be handed over by you for charging purpose on 29th November, 2013, hence we are calling PLCC commissioning engineer for PLCC commissioning of Pune-Aurangabad line on 29th November, 2013 morning at both ends. As assured by you, kindly confirm same by return mail by tomorrow morning.”

The petitioner vide its mail of the same date sent a confirmation and PGCIL also confirmed that they were calling the PLCC engineer on 29th November, 2013 for PLCC commissioning work. From Annexure A-2 of the petition, it is noticed that Electrical Inspector of Regional Inspectorial Organisation, Mumbai had inspected the installations relating to 400 kV D/C Aurangabad (PGCIL)- Pune (PGCIL) Transmission line on 26th and 27th November 2013 and non-compliance of certain regulations/provisions of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 were conveyed to the petitioner vide letter dated 27.11.2013 in response to which the petitioner has submitted a compliance report vide letter dated 29.11.2013. Based on the clarification, Electrical Inspector has accorded approval for energisation of the electrical installation related to 400 kV D/C Aurangabad (PGCIL)- Pune (PGCIL) Transmission line vide letter dated 29.11.2013. Before handing over the transmission line to PGCIL, the petitioner is stated to have carried out the final patrolling work on 30.11.2013 and during patrolling, the petitioner found that MSETCL was carrying out crossing of 400 kV D/C Bableshtar-Aurangabad quad line over the transmission line of the petitioner at location No. 98/0 and 98/1 at Wahegaon village which is around 40 kms from Aurangabad. Since the line crossing work by MSETCL was neither known to WRTMPL nor to PGCIL, WRTMPL contacted Deputy Executive Engineer (Construction), Aurangabad, MSETCL who confirmed telephonically that the

works of crossing would be over by 6 pm on 30.11.2013. WRMTPL again patrolled in the evening wherein it was noticed that the crossing works by MSETCL were not over by 9 PM WRTMPL vide email dated 30.11.2013 at 09.04 PM addressed to Chief Engineer, MSETCL, Aurangabad with copies to PGCIL, WRPC, WRLDC and SLDC, etc. intimated that WRTMPL could not carryout final testing of Pune (PG)-Auragnabad (MSETCL) transmission line due to MSETCL's balance work and requested MSETCL to complete the balance crossingwork by early morning of 1.12.2013 so that the petitioner could carry out final testing and commissioning in the afternoon of 1.12.2013.MSETCL could finish the work only on 1.12.2013 evening and confirmed the same through email (Annexure A-4 to the petition). The petitioner after carrying out the testing informed PGCIL vide its letter dated 1.12.2013 (Annexure A-5) as under:

“It is to inform you that construction work of the line has been completed as per the Implementation Agreement meeting the requirements of applicable IS.

The line has been jointly & successfully tested on 1.12.2013 with Off Line Fault Locator as per the clause 5.7.2 of Implementation Agreement and agreed procedure.

The tests of 400 kV D/C Pune-Aurangabad line through Off Line Fault locator were carried out jointly in presence of Shri Rakesh Vhatkar, Asst. Engineer Powergrid, Pune, the copy of the report is enclosed for your reference please as per Clause No.5.7.3 of Implementation Agreement.

Documents pertaining to 400 kV D/C Pune-Aurangabad line viz. Tower Schedule, the copy of relevant statutory clearances and also clearance from CEA for charging of the line is already submitted for your kind perusal.

All men and material has been removed from the line and the line is handed over for further necessary action at your end.”

The petitioner vide its letter dated 17.12.2013 (Annexure A-6) requested PGCIL for acceptance of Commissioning Tests and issuing of CoD letter in respect of 400 kV D/C Pune- Aurangabad Transmission line. The said letter is extracted as under:

“We are pleased to inform that line construction work of 400 kV D/C Pune-Aurangabad line was completed on 30th November, 2013. However, ongoing crossing work of 400 kV D/C-Q Aurangabad-Bableshtar line over our 400 kV D/C Pune-Aurangabad line was not completed by MSETCL due to which we could not test our line on 30.11.2013.

On getting clearance on 1.12.2013 from MSETCL, Aurangabad after completion of their work testing of 400 kV D/C Pune-Aurangabad line was carried out successfully on 1st December, 2013 and the line was handed over to M/s PGCIL for commissioning on the same day.

Subsequently, after resolving technical issues by Powergrid Aurangabad, Ckt-II & Ckt-I of 400 kV D/C Pune-Aurangabad line were commissioned on 4th & 5th December, 2013 respectively. Considering that the above stated matters were beyond our control, we request you to issue COD letter for 400 kV D/C Pune-Aurangabad line (Ckt-I & Ckt-2) w.e.f. 1st of December, 2013.

You are aware that as per the agreement with the beneficiaries, the Commissioning letter issued by POWERGRID should indicate,

- Acceptance of the Tests Conducted successfully as per Clause No. 6.2 and 6.3 of Implementation Agreement.
- Usefulness of the line to the beneficiaries of Western Region.
- Date of commissioning.

Test reports, statutory approvals and other particulars related to the line have been handed over to Dy. GM, PGCIL, Talegaon.”

PGCIL in its letter dated 1.1.2014 accepted the date of commercial operation of the transmission line w.e.f. 1.1.2014. The letter of PGCIL is extracted as under:-

“This is with reference to your letter No. WRTMPL/500/Pune/UGK/2013-14 dated 17.12.2013 on the above cited subject. POWERGRID generally satisfied with the test reports of 400 kV D/C Pune-Aurangabad Transmission Line. The line has been successfully commissioned and is declared under Commercial Operation w.e.f. 1st January, 2014 in accordance with CERC Regulations, 2009-14.

However, POWERGRID’s acceptance in the above matter shall not absolve M/s WRT (M)PL from their obligations and responsibilities.”

12. From the above narration of facts, it emerges that the petitioner completed the works on the 400 kV D/C Pune (PGCIL) – Aurangabad (MSETCL) transmission line on 29.11.2013. Approval for energisation of the transmission line was accorded by the

Electrical Inspector on 29.11.2013. On account of the crossing work 400 kV Bableswar-Aurangabad-II D/C Q-Line being carried out by MSETCL over 400 kV D/C Pune (PGCIL)-Aurangabad (MSETCL) transmission line, the petitioner could not carry out the final testing on 30.11.2013. Crossing work was completed by MSETCL on 1.12.2013 afternoon and after carrying out relevant testing, WRTMPL handed over the line to PGCIL on 1.12.2013 at 2300 hrs. After the technical issues were resolved with PGCIL, Ckt II and Ckt I of the transmission line was charged on 4.12.2013 and 5.12.2013 respectively. The petitioner has requested PGCIL vide its letter dated 17.12.2013 that since the factors resulting in delay were beyond its control, the CoD of the lines may be declared as 1.12.2013. However, PGCIL declared the date of commercial operation of the transmission line as 1.1.2014. The matter was taken up by the petitioner in WRPC. As per the decision in the 455th OCC meeting of WRPC, the matter was discussed in a meeting held on 7.2.2014 by a group consisting of MSETCL, SLDC Kalwa, PGCIL, WRPC, WRLDC and WRTMPL and the group opined that synchronization of the transmission line was delayed due to real time problem faced by PGCIL, Aurangabad and there was “absolutely no shortcoming from WRTMPL to make all efforts to complete the line on or before 30.11.2013”. In the 456th meeting of OCC of WRPC, the OCC agreed for the commissioning date of 30.11.2013. Member Secretary, WRPC after referring to Regulation 3(12)(C) of the 2009 Tariff Regulations suggested the petitioner to approach the Commission for notional COD as 30.11.2013.

13. The question that requires consideration is whether the petitioner was prepared to declare the commercial operation of the transmission line on 30.11.2013 but was

prevented from doing so on account of the crossing over work by MSETCL and PLCC testing by PGCIL. It is noted that at the instance of the decision taken in 455th OCC meeting of WRPC, a meeting was convened by SE (O), WRPC on 7.2.2014 in which the representatives of WRTMPL, PGCIL and MSETCL participated and each narrated their versions with regard to the events that took place between 30.11.2013 and 5.12.2013. The representative of WRTMPL submitted the transmission line was ready in all respects on 29.11.2013 and no work was going on or after 30.11.2013. NOC was received by WRTMPL from Electrical Inspector on 29.11.2013. According to the representative of WRTMPL, the line could not be charged as it found during the patrolling in the morning of 30.11.2013 that MSETCL was carrying out crossing of 400 kV Banleswar-Aurangabad quad line over the 400 kV D/C Pune(PG)-Aurangabad(MSETCL) transmission line at location No. 98/0 and 98/1 at Wahegaon village. The representative of WRTMPL has stated regarding crossing over work as under:

“The line crossing work by MSETCL was not known both to WRTMPL and PGCIL. Had it been informed to WRTMPL, WRTMPL would have informed that their line is getting commissioned by 30th November 2013 and would have informed in writing to MSETCL to take up the line crossing work subsequent to the commissioning of Pune-Aurangabad line.”

From the above, it appears that WRTMPL expected MSETCL to inform it about the line crossing work in advance and the failure on the part of MSETCL to do so has been construed as circumstances beyond the control of WRTMPL. The representative of MSETCL confirmed that crossing over work was being carried out and that fact was telephonically informed to the site representative of WRTMPL. The representative of MSETCL further clarified that the consent of WRLDC/SLDC was not obtained because

the transmission line of WRTMPL was not charged. We find merit in the submission of MSETCL that permission is sought from WRLDC/SLDC if the works on a transmission line has impact on the existing charged line. MSETCL cannot be expected to obtain permission from WRLDC/SLDC in respect of a transmission line which is not charged. As regards the intimation by MSETCL to WRTMPL regarding the crossover work, the representative of MSETCL confirmed that the intimation regarding crossover work was intimated verbally to the site engineer of WRTMPL which fact has not been denied by representative of WRTMPL. The petitioner cannot claim that it was not aware of the crossover work by MSETCL till the morning of 30.11.2013. Moreover, since one end of the line is to be connected to the sub-station of MSETCL, it was the obligation of WRTMPL to keep MSETCL about the progress of the works and the schedule of commissioning of its transmission line.

As regards the PLCC works, the representative of MSETCL submitted that the charging/synchronization of the transmission line got delayed due to non-completion of the following works by PGCIL:

Date	Activity carried out by PGCIL Aurangabad
30.11.2013	ABT meters to 400 kV D/C Pune-Aurangabad installed and checked
1.2.2013 to 2.12.2013	Before charging permit taken by PGCIL at 12.01 hrs (Permit no.661/7) for trials of Bus A & Bus B isolators, Line isolators and reactor isolators for 400 kV D/C Pune-Aurangabad, permit returned on dt.02-12-2013 at 00:30 hrs
3.12.2013	Drawing to Direct trip circuit for TBC needs modification, same is duly modified, necessary CMR installed & TBC trial taken. Wiring modified.
4.12.2013	PLCC trials taken from both ends

Representative of MSETCL submitted that majority of the works could have been carried out well before the possible synchronization on 30.11.2013 except for PLCC work and isolator/breaker trial operation before charging in the presence of MSETCL officers which can be carried out when the line is available. The representative of PGCIL submitted before SE(O) WRPC that PLCC work of sending and receiving signal from/to the other end could be tested only after the line was handed over to PGCIL. WRTMPL handed over the line on 1.12.2013 and thereafter PLCC works were taken up. Wiring problem and problem in sending DT signal of TBC breaker from Aurangabad to Pune sub-station were found which were rectified on the night of 3.12.2013. After clearances from SLDC/WRLDC, second circuit of the transmission line was charge synchronized on 4.12.2013 at 18.14 hrs and first circuit on 5.12.2013 at 1950 hrs. As regards the DT signal problems, the representative of PGCIL submitted that the said problems occurred due to modification made by MSETCL in TBC wiring and the problem was noticed on 2.12.2013 and rectified on 3.12.2013 after laying separate cables. The representative of PGCIL further submitted before SE(O) WRPC that though all relevant trials of isolators were carried out on 29.11.2013 and 30.11.2013, fresh trials were carried out on the request of MSETCL on 1.12.2013 and 2.12.2013. From the above, it appears that the transmission line was handed over to PGCIL on 1.12.2013 and the lines could be charged and synchronized on 4.12.2013 and 5.12.2013 on account of real time problems faced during testing. Another important fact needs to be noticed. The representative of MSETCL submitted before SE(O) WRPC that in view of the ongoing outage of Chandrapur-Padghe HVDC bi-pole line on 30.11.2013 and 1.12.2013, SLDC would have denied permission to take any major activity like charging

of new line and outage of any line in relevant corridors. Even if for the sake of argument, it is accepted that WRTMPL could have handed over the line on 30.11.2013 to PGCIL, the real time operation and the grid constraint on account of outage of Chandrapur-Padghe HVDC bi-pole line SLDC Maharashtra would not have allowed the transmission line to be synchronized and declared under commercial operation on 30.11.2013 as claimed by the petitioner. These problems could have been avoided through proper coordination with PGCIL and MSETCL and advance notice regarding commissioning for which the petitioner is only responsible. In our view, MSETCL and PGCIL cannot be held responsible for the delay in trial operation and charging of the transmission line.

14. Let us examine what is the obligation of the respective parties with regard to the commissioning of the transmission line as per the Implementation Agreement dated 23.11.2007 between PGCIL and WRTMPL. Clauses 6.2.1, 6.2.2, 6.2.4, 6.2.5, 6.2.6, and 6.3.1 of the Implementation Agreement provide as under:

“6.2.1 The IPTC shall be responsible for ensuring commissioning of each element of the project in accordance with the Technical Specifications and Technical particulars, at its own cost.

6.2.2 The IPTC shall give POWERGRID and Independent Engineer not less than ten (10) days prior notice of each Commissioning Test.

6.2.4 The IPTC and POWERGRID shall each designate qualified and authorized representative to monitor each Commissioning Test.

6.2.5 The Commissioning Tests shall be carried out in the manner and applying the criteria as set out in the Technical Particulars and Technical Specifications. Testing and measuring procedures applied during each Commissioning Test shall be in accordance with codes, practices and procedures of Bureau of Indian Standards and, wherever applicable, international testing

codes/standards/Prudent Utility Practices and shall be mutually agreed between the IPTC & POWERGRID sufficiently in advance.

6.2.6 Within five(5) days of Commissioning Tests, the IPTC shall provide POWERGRID and Independent Engineer each with copies of detailed test reports.

6.3 Commercial Operation

6.3.1 An element of the Project shall be declared Commissioned and the Commercial Operation Date shall be achieved on the earlier of the date that POWERGRID is satisfied with the test report or the date the Independent Engineer has issued a Final Test Certificate stating that the Commissioning Tests have been carried out in accordance with this Agreement and satisfy the criteria of the Commissioning of such element of the Project.”

It is apparent from the above provisions that WRTMPL which is the Independent Private Transmission Company (IPTC) in this case is required to give at least 10 days written notice to PGCIL prior to the commissioning test. Further, the Commissioning Tests shall be jointly monitored by the qualified and authorized representative of WRTMPL and PGCIL. After the commissioning test, PGCIL shall issue a certificate regarding commissioning and commercial operation in terms of clause 6.3.1. From the record, it emerges in the instant case that the petitioner verbally intimated about the handing over of the transmission line on 29.11.2013 to PGCIL on same date. After receiving the verbal intimation, PGCIL sought a confirmation through e-mail so that it could call the PLCC engineer. The confirmation was given by WRTMPL on the same day. But it could hand over the line only on the night of 1.12.2013 to PGCIL. Therefore, the petitioner has not given a written notice of not less than 10 days as required under clause 6.2.2 of the Implementation Agreement. This is a lapse on the part of the petitioner, particularly when viewed in the context of the fact that the petitioner vide its letter dated 17.12.2013

had requested PGCIL to issue commissioning certificate in terms of clauses 6.2 and 6.3 of the Implementation Agreement. In other words, the petitioner is relying on the provisions of the implementation Agreement on selective basis. In our view, the petitioner has failed to give the required notice in terms of clause 6.2.2 of the Implementation Agreement. The period of 10 days has been prescribed in order to enable PGCIL not only to arrange for testing and trial operation but also for carrying out the planning and coordination work as entrusted under section 38 of the Act. As per the recital of the Implementation Agreement, the petitioner has acknowledged the provisions of section 38 of the Act and has agreed to abide by the same. Therefore, the petitioner cannot be allowed to take advantage of its own lapse under the Implementation Agreement.

Issue No.2 : Whether the case of the petitioner can be considered under second proviso to Regulation 3(12)(c) of the 2009 Tariff Regulations as prayed for by the petitioner?

15. Member Secretary WRPC has suggested the petitioner to approach the Commission under second proviso to Regulation 3(12)(c) of 2009 Tariff Regulations for deemed declaration of COD with effect from 30.11.2013. Accordingly, the petitioner has approached the Commission for declaration of COD of the transmission line with effect from 30.11.2013.

16. Regulation 3(12)(c) of 2009 Tariff Regulations is extracted as under:

“3. (12) ‘Date of commercial operation’ or ‘COD’ means,-

(c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:

Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for from that date:

Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service.”

Perusal of second proviso reveals that this provision can be invoked only when a transmission element is in regular service but is prevented for providing such service for the reasons not attributable to the transmission licensee. As per Regulation 3(12)(c), a transmission element is in regular service only after successful charging and trial operation. The Appellate Tribunal for Electricity in its judgment dated 2.7.2012 in Appeal No.123 of 2011 has examined the provisions of Regulation 3(12)(c) and has come to the conclusion that three conditions are required to be met for declaration of COD under the said regulation. Relevant paragraph of the judgment is extracted as under:

“10. A transmission system may comprise of one or more transmission lines and sub-station, inter-connecting transformer, etc. According to above definition an element of the transmission system which includes a transmission line, could be declared as attained COD if the following conditions are met:

- i) It has been charged successfully,
- ii) its trial operation has been successfully carried out, and
- iii) it is in regular service.”

In the instant case, both circuits of the transmission line were charged on 4.12.2013 and 5.12.2013 after trial operation. Before these dates, the transmission line cannot be said to be in regular service. Therefore, under second proviso to Regulation 3(12)(c), the transmission line can be declared under commercial operation only on or after 4/5.12.2013 and not before these dates. The case of the petitioner is that it was

prevented from carrying out trial operation and charging for the purpose of commissioning on 30.11.2013 which is not covered under Regulation 3(12)(c) of 2009 Tariff Regulations.

17. As per Regulation 3(12), after successful charging and trial operation, a transmission element can be said to be in regular service and shall be declared under commercial operation with effect from 0000 hrs. However, the first proviso provides that the date of commercial operation shall be the first day of the calendar month. After the test charging of both circuits on 4.12.2013 and 5.12.2013, PGCIL has declared the transmission line as under commercial operation with effect from 1.1.2014 in terms of first proviso to Regulation 3(12)(c) of 2009 Tariff Regulations. In our view, the decision of PGCIL is in accordance with the extant regulations and does not call for interference.

18. With the above, Petition No. 146/MP/2014 is disposed of.

Sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson